

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

JAMES G. (CASEY) WALSH, III, ET AL,)	
)	
Plaintiff(s),)	
)	
vs.)	Case No. 1116-CV29191
)	Division 8
)	
THE DIOCESE OF KANSAS CITY-ST.)	
JOSEPH AND BISHOP ROBERT FINN,)	
)	
Defendant(s).)	

**JUDGMENT AND ORDER GRANTING PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT**

The Court considers the Plaintiffs’ Motion for Summary Judgment filed in this case. After reviewing the Motion, the Suggestions in Support, the Suggestions in Opposition, the Reply, and having heard the arguments of counsel, this Court finds as follows:

1. Plaintiffs are 42 of 47 claimants who entered into a global settlement agreement with Defendant, The Diocese of Kansas City-St. Joseph, (hereinafter referred to as “Diocese”) in August of 2008 to settle Plaintiffs’ various claims of sexual abuse against the Diocese, the Bishop and others.
2. The settlement agreement included both monetary and non-monetary relief for claimants.
3. The settlement agreement was comprised of three separate documents: (1) the Memorandum of Understanding (hereinafter referred to as “MOU”) between all claimants and the Diocese (including Exhibit A delineating the non-monetary commitments made by the Diocese), (2) the individual Settlement Agreement and Arbitration Agreements, and (3) the

individual Mutual Settlement Agreements and General Release. These documents constitute “the contract” in this case.

4. The MOU provided that the parties selected Hollis Hanover, Esq. to serve as arbitrator.

5. In June 2011, there arose a dispute among the parties as to whether or not the Diocese was in compliance with the non-financial portion of the settlement agreement. Plaintiff requested arbitration of the dispute and the Diocese responded by denying that the agreement provided for arbitration before Arbitrator Hollis Hanover.

6. On October 6, 2011, Plaintiffs filed this action seeking to compel arbitration of this dispute before Arbitrator Hollis Hanover.

7. Defendants filed an answer including purported affirmative defenses, which essentially assert that the Defendants did not violate any of the non-financial commitments in the Settlement Agreement of 2008.

Plaintiffs now move for summary judgment contending that the settlement agreement is a binding contract, that the agreement mandates arbitration as the method of resolving disputes between the parties regarding the agreement and that the agreement provides that the arbitrator will be Hollis Hanover. The parties agree that this Court must determine whether there was a valid arbitration agreement and whether this specific dispute falls within the scope of the arbitration agreement. *See Arrowhead Contr., Inc. v. M.H. Washington, LLC*, 243 S.W.3d 532, 535 (Mo. Ct. App. 2008).

Defendant does not dispute that a valid arbitration agreement exists but argues that the arbitration clause applied only to the monetary agreement, not to the non-monetary commitments made by the Diocese. Defendant argues that since it never intended for the arbitration provision to apply to anything other than the process for apportionment and distribution of the monetary

award in the settlement agreement that this specific dispute does not fall within the scope of the arbitration agreement.

The question in this case is, then, whether or not a dispute over compliance with the non-financial provisions of the contract falls within the scope of the arbitration agreement.

Summary judgment is appropriate if the issue to be resolved is the construction of a contract that is unambiguous on its face. *Daniels Express. & Transfer Co. v. GMI Corp.*, 897 S.W. 2d 90, 91-92 (Mo. Ct. App. 1995) (citation omitted). The determination of whether a contract is ambiguous is a question of law for the court. *Jim Carlson Constr., Inc. v. Bailey*, 769 S.W.2d 480, 482 (Mo. Ct. App. 1989) (citation omitted). A contract is not rendered ambiguous merely because the parties disagree on the meaning of its terms. *Burrus v. HBE Corp.*, 211 SW3d 613, 617 (Mo. Ct. App. 2006); *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club*, 491 S.W. 2d 261, 264 (Mo. 1973); *Crim v. National Life and Acci. Ins. Co.*, 605 S.W.2d 73, 76 (Mo 1980).

“[A] contract must be construed as a whole, giving effect to every part, if it is fairly and reasonably possible to do so, and to thus determine the true intention of the parties.” *AJM Packaging Corp. v. Crossland Consrt. Co., Inc.*, 962 S.W.2d 906, 912 (Mo. Ct. App. 1998). Where several writings form the contract, the Court must look at the entire agreement to determine the intent of the parties. *See Martin v. United States Fid. & Guar. Co.*, 996 S.W.2d 506, 510 (Mo. 1999).

This Court has reviewed the three documents that constitute the contract in this case. The MOU, the individual Settlement Agreement and Arbitration Agreements, and the individual Mutual Settlement and General Releases all contain an arbitration provision that provided for binding arbitration on “any dispute” concerning the documents and all related matters. All three documents also refer to the non-financial

commitments made by the Diocese as part of the global settlement. None of the documents contain language limiting the application of the arbitration provision to the monetary provision only. In fact, the MOU contains a separate enumerated paragraph providing for participation in the group settlement and arbitration process and another enumerated paragraph with the heading “The Arbitration Process.” Under that heading is a paragraph that provides:

Any dispute concerning this MOU, related agreements and/or the Arbitration process shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute shall be final and binding.

The individual Settlement Agreement and Arbitration Agreements and the individual Mutual Settlement and General Releases contained similar language.

Summary Judgment is appropriate when the moving party demonstrates there is no genuine issue of material fact and is therefore entitled to judgment as a matter of law. *Hill v. Ford Motor Co.*, 277 S.W.3d 659, 664 (Mo. 2009). A genuine issue of material fact must be real and substantial and cannot merely be made up of conjecture, theory and possibility. *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 378 (Mo. 1993). When Plaintiff files a motion for summary judgment, plaintiff must establish that there is no genuine dispute as to those material facts upon which the plaintiff would have had the burden of persuasion at trial. *Id.* at 381

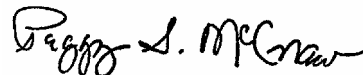
“There is a strong presumption in favor of arbitrability, and where there is a broad arbitration provision, the trial court should order arbitration of any dispute that touches matters covered by the parties’ contract.” *Manfredi v. Blue Cross & Blue Shield of Kan. City*, 340 S.W.3d 126, 130 (Mo. Ct. App. 2011) (citations and internal quotations omitted).

The contract in this case contained a broad arbitration provision, which provided that any dispute regarding the contract or any related matters would be subject to arbitration. The language in the contract is unambiguous. Therefore, Plaintiffs are entitled to judgment as a matter of law on their petition to compel arbitration. Plaintiffs Motion for Summary Judgment is GRANTED.

IT IS THEREFORE ORDERED that the Parties shall arbitrate the claimed breaches of the 2008 Settlement Agreement. The arbitration shall be accomplished with Hollis Hanover, Esq., the original arbitrator agreed to by the parties. If Mr. Hanover cannot serve for any reason, an arbitrator will be appointed in accordance with §435.360 RSMo.

June 6, 2012

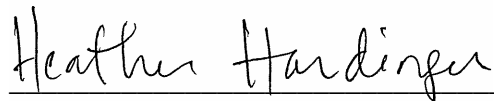
DATE



Peggy Stevens McGraw
Judge, Division 8

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